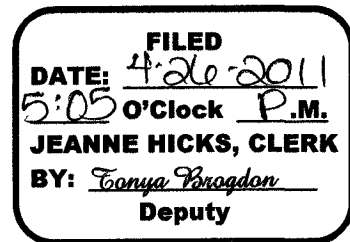


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: T. Brogdon, Deputy Clerk

CASE NO. V1300CR201080049

DATE: April 26, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:
JURY TRIAL – DAY 33

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 8:55 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel for Defendant

Truc Do, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin, and Defendant are present in the Courtroom. The Jury is not present.

The Court advises it has reviewed Counsel for Defendants Motion to exclude testimony of Richard Haddow, the renewed Motion for Sanctions pursuant to Rule 15.7, and part of the transcript of the first interview. Discussion ensues.

Court and Counsel discuss email from Mr. Haddow, testimony of prior sweat lodge ceremonies, Jury Instruction, disclosure, and Brady issues.

Counsel for Plaintiff renews their request that they be allowed to bring in more information on the very issue of causation.

The Court advises opening up these various technical matters at this time two months into the Trial is not appropriate, there has been no compliance with 15.6. With regard to the concern of interjecting hearsay, the Court has dealt with those objections and has ruled in Bench Conferences that it is inappropriate. This is essentially disclosure made almost a year after its discovery, it is not in accordance with the rules therefore, **IT IS ORDERED** Mr. Haddow is precluded as a State witness.

Counsel for Plaintiff renews their request to be able to continue on the issue of causation to bring in information for the Jury about Mr. Rays prior sweat lodge ceremonies.

The Court advises it is late disclosure, the Motion for mistrial was denied and to add to the Trial at this time is not appropriate.

Counsel for Plaintiff requests the Court reconsider allowing the State to present through the testimony of Amayra Hamilton and additional witnesses, the information that goes to causation, specifically the events in 2005 and some additional information with respect to 2007 and 2008.

The Court advises a distinction was made at the time of the 404B ruling about the effects that were apparent after prior sweat lodges and the effects that were apparent after the 2009 sweat lodge; there is essentially a distinction in kind. The rulings the Court has made stand.

The Court advises there is not going to be testimony with regard to the Daniel P matter.

~~~Recess~~~

At 9:18 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Michael Hamilton having been previously sworn resumes testimony.

Exhibits 491 and 883 are offered and admitted into evidence without objection.

Exhibit 492 is admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Michael Hamilton is reminded of the Rule for the exclusion of witnesses and excused subject to possible recall.

Divera (aka Amayra) Hamilton is sworn and testifies.

The Jury is reminded of the admonition; Divera (aka Amayra) Hamilton is advised of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 10:59 a.m. Court reconvenes, all previously appearing parties and the Jury is present.

Divera (aka Amayra) Hamilton resumes testimony.

The Jury is reminded of the admonition; Divera (aka Amayra) Hamilton is reminded of the Rule for the exclusion of witnesses and excused for the noon recess.

~~~Noon Recess~~~

At 1:33 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Divera (aka Amayra) Hamilton resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Exhibit 587 is offered. There being an objection by Counsel for Plaintiff, **IT IS ORDERED** sustaining the objection and Exhibit 587 is not admitted into evidence.

Exhibit 587 is re-offered. There being an objection by Counsel for Plaintiff, **IT IS ORDERED** sustaining the objection and Exhibit 587 is not admitted into evidence.

The Jury is reminded of the admonition; Divera (aka Amayra) Hamilton is reminded of the Rule for the exclusion of witnesses and excused for a recess.

~~~Recess~~~

At 3:25 p.m. Court reconvenes, all previously appearing parties and the Jury is present.

Divera (aka Amayra) Hamilton resumes testimony.

Exhibit 912 is offered. There being an objection by Counsel for Plaintiff, **IT IS ORDERED** sustaining the objection and Exhibit 912 is not admitted into evidence.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition; Divera (aka Amayra) Hamilton is reminded of the Rule for the exclusion of witnesses and excused for the evening recess.

The Court stands adjourned for the day.

END TIME: 5:05 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde